

ATTORNEY DOCKET NO.: S0351/249009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS: Gibson et al.

SERIAL NO.: 09/699,002

GROUP ART UNIT: 1616

FILED: October 26, 2000

EXAMINER: Badio

FOR: HIGH VISCOSITY LIQUID CONTROLLED DELIVERY SYSTEM AND
MEDICAL OR SURGICAL DEVICE# 4
AKD
2.22.02Assistant Commissioner for
Patents
Washington, D.C. 20231I hereby certify that this correspondence is being transmitted by
facsimile on the date shown below to the Patent and Trademark
Office at (703-872-9306 on January 30, 2002RESPONSE TO ELECTION REQUIREMENT
AND PETITION FOR EXTENSION OF TIME

Sir:

The Examiner issued a requirement for restriction dated July 30, 2001,

02/25/2002 HDENDY 00000001 110055 09205102
requiring restriction between the following inventions:

01 FC:128 1960.00 CH

- I. Claim 88 (in part) drawn to compounds of formula II;
- II. Claim 88 (in part) drawn to compounds of formula III;
- III. Claim 88 (in part) drawn to compounds of formula IV;
- IV. Claim 88 (in part) drawn to compounds of formula V;
- V. Claim 88 (in part) drawn to compounds of formulae VI and VII;
- VI. Claim 88 (in part) drawn to compounds of formula VIII.

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The Examiner states that the inventions are distinct because they are drawn to different structural compounds, and that restriction is proper because the search for one group is not required for the others.

The Examiner further requires Applicants to elect a single disclosed species from the elected group.

Applicants elect the invention of Group III, with traverse. Applicants further elect the species of compound of formula IV wherein R1, R2, R3, and R5 are acetate and R4 is lactate, with traverse.


Applicants respectfully traverse the requirement for restriction to the extent that the Examiner is restricting within a single claim, and appears to intend to withdraw nonelected "groups" from consideration, and has not indicated that she is following the procedure set forth in MPEP 803.02. It is improper for the Examiner to withdraw a portion of the claim from consideration, since this is tantamount to a rejection under 35 U.S.C. § 121. *See In re Weber*, 198 USPQ 328 (CCPA 1978); *In re Haas*, 198 USPQ 334 (CCPA 1978). Applicants respectfully submit that the Examiner should follow the procedure described in MPEP 803.02 with respect to the nonelected groups above.

Pursuant to 37 C.F.R. 1.136(a), Applicants herewith petition that the period for response to the Office Action mailed on July 30, 2001, in connection with the above-identified application be extended for five months, to and including January 30, 2002. Our check in the amount of \$1960.00 to cover the fee under 37 C.F.R. 1.17 is enclosed.

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The Commissioner is authorized to charge any additional fees that may be due
or credit any overpayment to Deposit Account No. 11-0855.

Respectfully submitted,



Bruce D. Gray
Reg. No. 35,799

Date: January 30, 2002
KILPATRICK STOCKTON LLP
Suite 2800, 1100 Peachtree Street
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(404) 815-6218

The "Received" stamp of the Patent Office imprinted hereon will acknowledge receipt of:

Applicant: Gibson et al.
Application No. 09/385,107
Filing Date October 26, 2000 S0351/249009

PAPERS SUBMITTED:

1. Response to Election Requirement and Petition for Extension of Time w/certificate of mailing under 37 CFR 1.8(a)
2. check in the amount of \$1960 for five month EOT

By: Bruce D. Gray, Reg. No. 35,799
Date: January 29, 2002

WACHOVIA ACCOUNT NO.: 13 159 238

KILPATRICK STOCKTON LLP

VENDOR # 24959

CHECK #: 288880

DATE: 01-29-02		PAYEE: Commissioner for Patents		VENDOR # 24909		CHARGE # 24909	
REF.#:	G/L #	INVOICE #	INVOICE DATE	DESCRIPTION		AMT.PAID	
456135	20999 00000000	0129020	01-29-02	249009 USSN 09/385.107 Extension of Time		1.960.00	
TOTAL						1.960.00	

KILPATRICK STOCKTON LLP

OPERATING ACCOUNT
1100 Peachtree Street
Atlanta, Georgia 30309-4530

DATE
01-29-02

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